

(7) requiring the contractor to furnish written assurance, when technical data is delivered or is made available, that the technical data is complete and accurate and satisfies the requirements of the contract concerning technical data;

(8) establishing remedies to be available to the Federal Government when technical data required to be delivered or made available under the contract is found to be incomplete or inadequate or to not satisfy the requirements of the contract concerning technical data; and

(9) authorizing the head of the agency to withhold payments under the contract (or exercise another remedy the head of the agency considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3733.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2302(a)	41:418a(a) (1st sentence).	Pub. L. 93-400, § 21, as added Pub. L. 98-577, title III, § 301(a), Oct. 30, 1984, 98 Stat. 3074; Pub. L. 99-145, title IX, § 961(d)(2), Nov. 8, 1985, 99 Stat. 704.
2302(b)	41:418a(a) (2d, last sentences).	
2302(c)	41:418a(b).	
2302(d)	41:418a(c).	
2302(e)	41:418a(d).	

In subsection (a), the words “Federal Acquisition Regulation” are substituted for “single system of Government-wide procurement regulations as defined in section 403(4) of this title” because section 3(a)(1) of the Office of Federal Procurement Policy Act Amendments of 1988 (Public Law 100-679, 102 Stat. 4055) substituted “Federal Acquisition Regulation” for “single system of Government-wide procurement regulations” in section 6 of the Office of Federal Procurement Policy Act (Public Law 93-400, 88 Stat. 797, 41:406) and because section 3(c) of the Office of Federal Procurement Policy Act Amendments of 1988 (102 Stat. 4056) struck section 4(4) of the Office of Federal Procurement Policy Act (88 Stat. 797, 41:403(4)), as amended by section 4 of the Office of Federal Procurement Policy Act Amendments of 1983 (Public Law 98-191, 97 Stat. 1326), which had defined “single system of Government-wide procurement regulations”.

§ 2303. Ethics safeguards related to contractor conflicts of interest

(a) DEFINITION.—In this section, the term “relevant acquisition function” means an acquisition function closely associated with inherently governmental functions.

(b) POLICY ON PERSONAL CONFLICTS OF INTEREST BY CONTRACTOR EMPLOYEES.—

(1) DEVELOPMENT AND ISSUANCE OF POLICY.—

The Administrator shall develop and issue a standard policy to prevent personal conflicts of interest by contractor employees performing relevant acquisition functions (including the development, award, and administration of Federal Government contracts) for or on behalf of a Federal agency or department.

(2) ELEMENTS OF POLICY.—The policy shall—

(A) define “personal conflict of interest” as it relates to contractor employees performing relevant acquisition functions; and

(B) require each contractor whose employees perform relevant acquisition functions to—

(i) identify and prevent personal conflicts of interest for the employees;

(ii) prohibit contractor employees who have access to non-public government information obtained while performing relevant acquisition functions from using the information for personal gain;

(iii) report any personal conflict-of-interest violation by an employee to the applicable contracting officer or contracting officer’s representative as soon as it is identified;

(iv) maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(v) have procedures in place to screen for potential conflicts of interest for all employees performing relevant acquisition functions; and

(vi) take appropriate disciplinary action in the case of employees who fail to comply with policies established pursuant to this section.

(3) CONTRACT CLAUSE.—

(A) CONTENTS.—The Administrator shall develop a personal conflicts-of-interest clause or a set of clauses for inclusion in solicitations and contracts (and task or delivery orders) for the performance of relevant acquisition functions that sets forth—

(i) the personal conflicts-of-interest policy developed under this subsection; and

(ii) the contractor’s responsibilities under the policy.

(B) EFFECTIVE DATE.—Subparagraph (A) shall take effect 300 days after October 14, 2008, and shall apply to—

(i) contracts entered into on or after that effective date; and

(ii) task or delivery orders awarded on or after that effective date, regardless of whether the contracts pursuant to which the task or delivery orders are awarded are entered before, on, or after October 14, 2008.

(4) APPLICABILITY.—

(A) CONTRACTS IN EXCESS OF THE SIMPLIFIED ACQUISITION THRESHOLD.—This subsection shall apply to any contract for an amount in excess of the simplified acquisition threshold (as defined in section 134 of this title) if the contract is for the performance of relevant acquisition functions.

(B) PARTIAL APPLICABILITY.—If only a portion of a contract described in subparagraph (A) is for the performance of relevant acquisition functions, then this subsection applies only to that portion of the contract.

(c) BEST PRACTICES.—The Administrator shall, in consultation with the Director of the Office of Government Ethics, develop and maintain a repository of best practices relating to the prevention and mitigation of organizational and personal conflicts of interest in Federal contracting.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3735.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2303(a) 2303(b), (c)	no source. 41:405c(a), (c).	Pub. L. 110-417, [div. A], title VIII, §841(a), (c), Oct. 14, 2008, 122 Stat. 4537, 4539.

In this section, the words “relevant acquisition functions” are substituted for “acquisition functions closely associated with inherently governmental functions” because of subsection (a).

In subsection (b), the words “Not later than 270 days after the date of the enactment of this Act” are omitted because of section 6(f) of the bill.

In subsection (b)(4)(A), the words “Except as provided in subparagraph (B)” are omitted as unnecessary.

DEADLINE FOR ISSUANCE OF STANDARD POLICY

Pub. L. 111-350, §6(f)(1), Jan. 4, 2011, 124 Stat. 3854, provided that: “The requirement in section 2303(b)(1) of title 41, United States Code, to issue a policy shall be done not later than 270 days after October 14, 2008.”

REVIEW OF FEDERAL ACQUISITION REGULATION RELATING TO CONFLICTS OF INTEREST

Pub. L. 110-417, [div. A], title VIII, §841(b), Oct. 14, 2008, 122 Stat. 4539, provided that:

“(1) REVIEW.—Not later than 12 months after the date of the enactment of this Act [Oct. 14, 2008], the Administrator for Federal Procurement Policy, in consultation with the Director of the Office of Government Ethics, shall review the Federal Acquisition Regulation to—

“(A) identify contracting methods, types and services that raise heightened concerns for potential personal and organizational conflicts of interest; and

“(B) determine whether revisions to the Federal Acquisition Regulation are necessary to—

“(i) address personal conflicts of interest by contractor employees with respect to functions other than those described in subsection (a) [now 41 U.S.C. 2303(b)]; or

“(ii) achieve sufficiently rigorous, comprehensive, and uniform government-wide policies to prevent and mitigate organizational conflicts of interest in Federal contracting.

“(2) REGULATORY REVISIONS.—If the Administrator determines pursuant to the review under paragraph (1)(B) that revisions to the Federal Acquisition Regulation are necessary, the Administrator shall work with the Federal Acquisition Regulatory Council to prescribe appropriate revisions to the regulations, including the development of appropriate contract clauses.

“(3) REPORT.—Not later than March 1, 2010, the Administrator shall submit to the Committees on Armed Services of the Senate and House of Representatives, the Committee on Homeland Security and Governmental Affairs in the Senate, and the Committee on Oversight and Government Reform of the House of Representatives a report setting forth such findings and determinations under subparagraphs (A) and (B) of paragraph (1), together with an assessment of any revisions to the Federal Acquisition Regulation that may be necessary.”

§ 2304. Conflict of interest standards for consultants

(a) CONTENT OF REGULATIONS.—The Administrator shall prescribe under this division Government-wide regulations that set forth—

(1) conflict of interest standards for persons who provide consulting services described in subsection (b); and

(2) procedures, including registration, certification, and enforcement requirements as may be appropriate, to promote compliance with the standards.

(b) SERVICES SUBJECT TO REGULATIONS.—Regulations required by subsection (a) apply to—

(1) advisory and assistance services provided to the Federal Government to the extent necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States;

(2) services related to support of the preparation or submission of bids and proposals for Federal contracts to the extent that inclusion of the services in the regulations is necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States; and

(3) other services related to Federal contracts as specified in the regulations prescribed under subsection (a) to the extent necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States.

(c) INTELLIGENCE ACTIVITIES EXEMPTION.—

(1) ACTIVITIES THAT MAY BE EXEMPT.—Intelligence activities as defined in section 3.4(e) of Executive Order No. 12333 or a comparable definitional section in any successor order may be exempt from the regulations required by subsection (a).

(2) REPORT.—The Director of National Intelligence shall report to the Intelligence and Appropriations Committees of Congress each January 1, delineating the activities and organizations that have been exempted under paragraph (1).

(d) PRESIDENTIAL DETERMINATION.—Before the regulations required by subsection (a) are prescribed, the President shall determine if prescribing the regulations will have a significantly adverse effect on the accomplishment of the mission of the Defense Department or another Federal agency. If the President determines that the regulations will have such an adverse effect, the President shall so report to the appropriate committees of the Senate and the House of Representatives, stating in full the reasons for the determination. If such a report is submitted, the requirement for the regulations shall be null and void.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3736.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2304(a)	41:405b(a).	Pub. L. 100-463, title VIII, §814, Oct. 1, 1988, 102 Stat. 2270-47.
2304(b)	41:405b(b).	
2304(c)	41:405b(d).	
2304(d)	41:405b(e).	

In this section, the text of 41:405b(c) is omitted as obsolete.

In subsection (a), before paragraph (1), the words “The Administrator shall prescribe under this division Government-wide regulations” are substituted for “Not later than 90 days after October 1, 1988, the Administrator of the Office of Federal Procurement Policy shall issue a policy, and not later than 180 days thereafter Government-wide regulations shall be issued under the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)” to eliminate obsolete words.

In subsection (b), before paragraph (1), the words “the following types of consulting services” are omitted as unnecessary.